

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMETRIO HERNANDEZ,

Defendant and Appellant.

B302642

(Los Angeles County
Super. Ct. No. PA093189)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Walgren, Judge. Affirmed.

Jennifer A. Gambale, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We review this appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

On August 28, 2019, appellant Demetrio Hernandez entered into a plea agreement with the People. Under the terms of the agreement, appellant entered a no contest plea to second degree robbery in violation of Penal Code section 211. Pursuant to the agreement, the court dismissed two remaining counts for robbery and grand theft automobile and allegations that appellant personally used a dangerous or deadly weapon during the robberies in violation of Penal Code section 12022, subdivision (b)(1). In exchange for his plea, appellant was sentenced to serve five years in state prison, with custody credit of 49 days. Appellant filed a timely notice of appeal.

Defense counsel stipulated that the police report provided the factual basis for appellant's no contest plea. The police report is described in the pre-plea probation report prepared for the parties, court, and counsel. The robbery victim told police that on July 17, 2019, he had parked his MTA utility truck in order to work on a railroad crossing when appellant approached him and exposed a black handgun in his waistband. The victim, in fear for his safety, allowed appellant to take his truck. When police detained appellant with the truck nine days later, appellant admitted he stole the truck from a construction site. He said the license plate on the truck was one he had stolen from another vehicle. During a search of the vehicle, officers recovered a BB gun.

We appointed counsel to represent Hernandez on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court to review the record independently as required by *People v. Wende*.

On June 9, 2020, we advised Hernandez he had 30 days within which to personally submit any contentions or issues he wished us to consider. On June 19, 2020, Hernandez filed a supplemental brief raising six issues for us to consider on his behalf, “hoping” the facts would help “to reduce my sentence”: 1) his trial attorney never tried to help him with a program for his addiction to crystal methamphetamine which he was using “too much” at the time he committed his crimes; 2) he stole the pick-up truck from a jobsite on a Sunday by using the keys left inside the truck, meaning his crime was a simple joyride; 3) the BB gun in his possession was one he had stolen from neighborhood gang members who also pressured him into letting them use the stolen truck; when they returned it to him, it had stolen license plates on it; 4) he was never read his *Miranda*¹ rights upon his arrest; 5) he is guilty of stealing the truck without using violence, but not of the theft of the license plates; and 6) he is a working person whose criminal activities were not escalating, contrary to the recommendation of the probation report, and he recently defeated his ex-wife’s allegations against him, winning sole custody of his two sons in dependency court.

We have examined the entire record and are satisfied that Hernandez’s counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

As noted, appellant filed a supplemental brief advising us of facts he hopes will reduce his sentence.

Appellant entered into a plea agreement whereby he agreed to a sentence of five years in exchange for dismissal of two of the three counts and the sentencing enhancements filed against him.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

Appellant did not challenge his plea agreement or his agreed-upon sentence in the trial court at any time. If he is now dissatisfied with the sentence to which he agreed and intends, by his supplemental brief, to challenge that sentence now, he cannot proceed in this court without first obtaining a certificate of probable cause from the trial court. (*People v. Buttram* (2003) 30 Cal.4th 773, 784–785 [a challenge to a sentence actually challenges the validity of the plea if the sentence is part of a plea bargain, requiring a certificate of probable cause to proceed on appeal].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

GRIMES, J.

WILEY, J.